



## **Agricultural Marketing Service**

### **7 CFR Part 205**

**[Doc. No. AMS-NOP-21-0073]**

**RIN 0581-AE06**

## **National Organic Program (NOP); Organic Livestock and Poultry Standards; Delay of Effective Date and Update of Compliance Date**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule; delay of effective date and update of compliance date.

**SUMMARY:** The Agricultural Marketing Service (AMS) is delaying the effective date of the Organic Livestock and Poultry Standards (OLPS) final rule, published on November 2, 2023, to meet the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). The CRA requires that agencies provide Congress with at least 60 days to review a major rule before it takes effect. For the OLPS final rule, AMS provided the required notice to Congress on November 13, 2023, after publication of the rule. Therefore, the published effective date did not provide 60 days for congressional review. This final rule delays the effective date of the OLPS final rule by 10 days to meet the 60-day requirement. AMS is making a technical correction to the compliance date of January 5, 2029, for indoor and outdoor stocking density requirements and soil and vegetation requirements for broiler operations to January 2, 2029. All other compliance dates of the OLPS final rule remain unchanged. Additionally, in acknowledgement of the U.S. Government Accountability Office assessment of the final rule, AMS confirms that the Administrative Pay-As-You-Go Act of 2023 does not apply to the OLPS final rule because it does not increase direct spending.

**DATES:** *Effective date:* The effective date of the Organic Livestock and Poultry Standards final rule amending 7 CFR part 205, published at 88 FR 75394 on November 2, 2023, is delayed until January 12, 2024.

*Compliance dates:* All organic operations must comply with the requirements of the OLPS final rule by January 2, 2025, except:

(1) Currently certified organic layer operations and layer operations that are certified before January 2, 2025, must comply with § 205.241(c)(2), (4), and (5), concerning outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(2) Currently certified organic broiler operations and broiler operations that are certified before January 2, 2025, must comply with § 205.241(b)(10) and (c)(2) and (6), concerning indoor and outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(3) Currently certified organic poultry operations and poultry operations that are certified before January 2, 2025, must comply with § 205.241(b)(4), concerning poultry house exit area requirements, by January 2, 2029.

**FOR FURTHER INFORMATION CONTACT:** Erin Healy, Director, Standards Division; Telephone: (202) 720-3252; Email: [erin.healy@usda.gov](mailto:erin.healy@usda.gov).

**SUPPLEMENTARY INFORMATION:** The OLPS final rule published on November 2, 2023, at 88 FR 75394. It amends the USDA organic regulations (7 CFR part 205) related to the production of livestock, including poultry, marketed as organic. The rule adds detailed regulations related to animal health care, indoor and outdoor space standards, manure management, temporary confinement of livestock, access to the outdoors, transportation conditions, and humane euthanasia and slaughter. The rule clarifies aspects of the existing USDA organic regulations that are not interpreted or enforced in a consistent manner. In turn, the detailed regulations in the final rule will

better assure consumers that organic livestock products meet a consistent standard, as intended by the Organic Foods Production Act of 1990 (OFPA).

This final rule delays the effective date of the OLPS rule in order to meet the requirements of the Congressional Review Act or “CRA” (5 U.S.C. 801–808). The CRA requires that before a rule can take effect, a report must be submitted to each House of the Congress and to the Comptroller General that includes a copy of the rule, a concise general statement of the rule, and its proposed effective date (5 U.S.C. 801(a)(1)). Furthermore, the effective date of a “major rule,” as defined at 5 U.S.C. 804, must be “the later of the date occurring 60 days after the date on which ... the Congress received the [required] report ... or ... the rule is published in the *Federal Register* ....” (5 U.S.C. 801(a)(3)). For the OLPS final rule (which meets the criteria of a major rule), the required information was not received by Congress until November 13, 2023,<sup>1</sup> so the rule cannot be effective until 60 days after that date, i.e., January 12, 2024. Therefore, the published effective date, which was calculated as 60 days after the date of publication of the rule in the *Federal Register*, is erroneous. This final rule delays the previously published effective date from January 2, 2024, to January 12, 2024.

In this action, AMS is not changing any of the compliance dates in the OLPS final rule, except to correct the compliance date for indoor and outdoor stocking density requirements and soil and vegetation requirements for broiler operations from January 5, 2029, as stated in the OLPS final rule, to January 2, 2029. This technical correction will make the date consistent with the other compliance dates in that rule. AMS has previously publicly discussed the OLPS final rule’s compliance dates with certifiers, producers, and stakeholders and believes maintaining them will minimize confusion and allow existing plans for compliance by the original compliance dates to be maintained.

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<sup>1</sup> U.S. Government Accountability Office. Report B-335744, November 16, 2023, available at <https://www.gao.gov/products/b-335744>.

AMS acknowledges that the preamble text of the OLPS final rule is now incorrect when it states compliance dates are “one year following the effective date of the final rule” or “five years from the effective date.” All compliance dates should be understood as one year or five years from the original effective date of January 2, 2024.

Section 553 of the Administrative Procedure Act, 5 U.S.C.553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. AMS has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because AMS is merely delaying the effective date and correcting one compliance date. AMS is delaying the effective date of the OLPS rule to be consistent with the requirements of the CRA as a matter of law and has no discretion in this matter. The compliance dates erroneously listed as January 5, 2029, in the OLPS final rule will now be corrected to January 2, 2029. These changes are administrative and minor in nature. Accordingly, AMS finds that there is good cause to dispense with notice and public procedure under 5 U.S.C. 553(b)(B).

**ADMINISTRATIVE PAY-AS-YOU-GO-ACT OF 2023:**

The U.S. Government Accountability Office (GAO) assessment of the OLPS final rule reported that AMS did not discuss the Administrative Pay-As-You-Go-Act of 2023 (Pub. L. 118-5, div. B, title III, 137 Stat 3) (Act) in the final rule.<sup>2</sup> The Office of Management and Budget memorandum on the Administrative Pay-As-You-Go-Act of 2023 stated that the requirements of the Act “apply to all rules that have not yet been submitted to the Office of Information and Regulatory Affairs (OIRA) as of the date of

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<sup>2</sup> U.S. Government Accountability Office. Report B-335744, November 16, 2023, available at <https://www.gao.gov/products/b-335744>.

this memorandum.”<sup>3</sup> Based on AMS’ understanding, analysis was not required. AMS submitted the OLPS final rule to OIRA on July 31, 2023, before the memorandum was published on September 1, 2023. However, AMS does confirm the Act does not apply to the OLPS final rule because it does not increase direct spending.

**Erin Morris,**

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*Agricultural Marketing Service.*

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<sup>3</sup> Office of Management and Budget. Memorandum for the Heads of Executive Departments and Agencies, September 1, 2023, available at <https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-21-Admin-PAYGO-Guidance.pdf>.